PRIVY COUNCIL REPORT

THE "JAG SHAKTI"

CHABBRA CORPORATION PTE. LTD. v. M.V. "JAG SHAKTI", OWNERS & ORS., INTERESTED

[P.C. (Lord Keith of Kinkel, Lord Fraser of Tulleybelton, Lord Roskill, Lord Brandon of Oakbrook & Lord Mackay of Clashfern) October 21, 22 & November 18, 1985]

[Privy Council Appeal No. 25 of 1983]

Shipping Law – Carriage of goods by sea – Wrongful delivery – Bills of lading – Delivery to party without production of original bills of lading – Liability in contract or in tort – Damages.

Shipping Law – Bills of lading – Delivery to party without production of original bills of lading – Liability in contract or in tort.

Tort – Conversion – Wrongful delivery – Damages.

In this case the appellants claimed against the owners of the ship "Jag Dhir" for failure to deliver a cargo of salt carried by that ship from Tuticorin in India to Chittagong in Bangladesh. The claim was raised by an action *in rem* against the ship "Jag Shakti", a ship in the same ownership as the "Jag Dhir", begun in the High Court of Singapore in the exercise of its admiralty jurisdiction. Rajah J. awarded the appellants damages of $389,117.62 with interest. The shipowners appealed to the Court of Appeal of Singapore on the ground that the damages awarded were too high. The appellants cross-appealed on the ground that they were too low. The Court of Appeal varied the award of damages made in the High Court by substituting the lower amount of $275,620.82 with interest. The Court of Appeal at the same time dismissed the appellant's cross-appeal. The appellants appealed to the Privy Council contending that the judgment of the Court of Appeal in reducing the amount of damages awarded to them by the trial judge should be set aside and the award made by him should be restored. Rajah J. in the High Court rejected the contention of the appellant about a subsale and held that damages should be related to the invoice value of the goods shipped, that is, in effect the market value of the goods on delivery at Chittagong. The learned judge went on to say that in the absence of reliable evidence as to what such value was, he had decided to take the amount deposited with the bankers in order to obtain the bank's counter signature for the purpose of the delivery of the goods. The learned judge did not go into the question whether the appellant's entitlement to such damages lay in contract or in tort.

The Court of Appeal also rejected the appellant's evidence about a subsale on the ground that there was no evidence to support it. The Court of Appeal therefore dismissed the appellant's cross-appeal. In regard to the respondent's appeal, the Court of Appeal held that the appellants were entitled to recover damages from them both for breach of their contract to deliver and in tort for conversion. They held further that the proper measure of damages in law on either basis was not the market value of the salt on delivery at Chittagong but only the amount which had been expended in the transaction in respect of the opening of the letters of credit, bank charges and insurance premiums to cover the salt in transit. See [1983] 1 M.L.J. 58. In the appeal before the Privy Council it was conceded for the appellants that the Court of Appeal had been in error in holding that the appellants could recover in contract and accepted that they could only recover in tort for conversion. It was also conceded on behalf of the respondents that although the appellants could not recover from the shipowners in contract, they nevertheless had a good cause of action against the latter for conversion.

Only two questions remained therefore for decision by the Privy Council. The first question was whether the proper measure of damages recoverable by the appellants was (a) the full market value of the salt on delivery at Chittagong as held by the trial judge or (b) the total amount expended in financing the purchase of the salt, as held by the Court of Appeal. If the answer to the first question is (b) no further question arises for decision. If the answer is (a) however a second question arises for decision namely what the appellants had proved on the evidence to have been the full market value of the salt on delivery at Chittagong.

Held: (1) it is not in dispute that the pledgee of a bill of lading is entitled on presentation of it to the ship at the port of discharge, to the possession of the goods represented by it. It has further been established that where one person A who has or is entitled to have the possession of the goods is deprived of such possession by the tortious conduct of another person B whether such conduct consists in conversion or negligence, the proper measure in law of damages recoverable by A from B is the full market value of the goods at the time when and the place where possession of them should be given;

(2) in this case the appellants as holders and indorsees for value of the bills of lading had the right to delivery of the salt to them at Chittagong. That right entitled them to recover from the shipowners, who had wrongfully converted the salt by delivering it to Mumtazzudin, the full value of the salt on delivery at Chittagong. The circumstance that the appellants having recovered from the shipowners the full value of the salt, might, after taking out the sum expended by them in financing the purchase of the salt by Mumtazzudin from IOC, have to account, in whole or in part, for the balance to Mumtazzudin was, as between the appellants and the respondents, wholly irrelevant;

(3) the proper measure in law of damages recoverable by the appellants from the shipowners as a result of the conversion of the salt was the full market value of the salt on delivery at Chittagong;

(4) the burden of proving the market value of the salt on delivery at Chittagong was on the appellants. In the event while it is probable that such value exceeded the sums of money expended in financing the transaction of sale, the appellants had failed to adduce any reliable evidence to prove what the amount of excess was. The amount of damages awarded by the Court of Appeal, although arrived at on a basis which was incorrect in law, is nevertheless the only amount which can justifiably be awarded on the legal basis considered to be correct.

Cases referred to:

(1) *Sewell* v. *Burdick* (1884) 10 App. Cas. 74.

(2) *Swire* v. *Leach* (1865) 18 C.B.N.S. 479; 144 E.R. 53.
(3) *The Winkfield* [1902] P. 42.
(4) *Claridge* v. *South Staffordshire Tramway Co.* [1892] 1 Q.B. 422.
(5) *London Joint Stock Bank Ltd.* v. *British Amsterdam Maritime Agency Ltd.* (1910) 16 Com. Cas. 102.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Anthony Colman Q.C. (*C. Arul* with him) for the appellant.

Timothy Walker Q.C. for the respondent.

Cur. Adv. Vult.

Lord Brandon of Oakbrook (delivering the Judgment of the Board): This appeal arises out of a claim by Chabbra Corporation Pte. Ltd. ("Chabbra") against the owners of the ship "Jag Dhir" ("the shipowners") for failure to deliver a cargo of salt carried by that ship from Tuticorin in India to Chittagong in Bangladesh in July 1977.

The claim was raised by an action *in rem* against the ship "Jag Shakti", a ship in the same ownership as the "Jag Dhir", begun in the High Court of Singapore on April 29, 1978 in accordance with the Admiralty jurisdiction conferred on that court by statute. The action was tried by Rajah J. who, by an order dated March 18, 1981, awarded Chabbra damages of S$389,117.62 with interest at 12% p.a. from July 27, 1977 and costs.

The shipowners appealed to the Court of Appeal of Singapore (Wee Chong Jin C.J., Chua and Lai Kew Chai JJ.) on the ground that the damages awarded were too high. Chabbra cross-appealed on the ground that they were too low. The Court of Appeal, by an order dated August 19, 1982, varied the award of damages made by Rajah J. by substituting for the amount awarded by him the lower amount of S$275,629.82 with interest at 12% p.a. from August 5, 1977. The Court of Appeal at the same time dismissed Chabbra's cross-appeal.

Chabbra now appeal, with the leave of the Court of Appeal, to this Board, contending that the judgment of the Court of Appeal reducing the amount of damages awarded to them by the learned trial judge should be set aside, and the award made by him should be restored. There is no cross-appeal to the Board by the shipowners.

Before their Lordships both sides accepted the facts of the case as found by the Court of Appeal. These facts, amplified to some extent by reference to the documents and to other findings by the trial judge also accepted by both sides, are as follows:

(1) By a written contract dated May 20, 1977 Indian Overseas Corporation of Calcutta, India, ("IOC"), agreed to sell Mumtazzudin & Sons of Dacca, Bangladesh, ("Mumtazzudin") 7,000 metric tons of edible salt at US$22 per metric ton C & F Chittagong/Chalna.

(2) The suppliers of the salt were Bihar Supply Syndicate also of Calcutta ("BSS"), who had contracted in writing to sell to IOC 21,000 metric tons of salt plus or minus 10% at US$22 per metric ton C & F Chittagong/Chalna by three shiploads of 7,000 metric tons per ship.

(3) The fact that IOC were not taking a profit on the sale was because they were permitted, by reason of the export of the goods, to import certain scheduled goods into India to the value of one-third of the value of the goods so exported.

(4) There was a business firm in Singapore called Atlas Enterprises ("Atlas") having two partners, one K.C. Sharma ("Sharma") and the other his wife. Sharma agreed with Mumtazzudin that Atlas would finance Mumtazzudin's contract of sale with IOC by causing transferable letters of credit to be opened by banks in Singapore in favour of IOC to pay for the salt bought by Mumtazzudin from the latter.

(5) Atlas subsequently caused two transferable letters of credit to be opened in favour of IOC. One was opened with the Singapore branch of the United Commercial Bank for US$30,800 to pay for 1,400 metric tons of salt at US$22 per metric ton. The other was opened with the Singapore branch of the Banque National de Paris for US$79,200 to pay for 3,600 metric tons at the same price.

(6) The total amount expended by Atlas in financing the purchase of the salt by Mumtazzudin from IOC, including the opening of the letters of credit, bank charges and premiums for the insurance of the salt in transit, amounted to S$275,620.82.

(7) Through the means of the two transferable letters of credit BSS were in due course paid for 5,000 metric tons of salt supplied by them to IOC. The payments were made by certain paying banks in India at the request

of the opening banks in Singapore.

(8) BSS, pursuant to their contract with IOC, shipped 5,000 metric tons of salt on board the ship "Jag Dhir" ("the ship") at Tuticorin for carriage to Chittagong.

(9) The shipowners' agents at Tuticorin issued two shipped on board bills of lading, numbered 1 and 2 respectively and both dated July 15, 1977, in respect of the salt so shipped. Bill of lading no. 1 covered 1,400 metric tons and bill of lading no. 2 covered 3,600 metric tons, making 5,000 metric tons in all. BSS were named as shippers in the two bills of lading, which provided for consignment to order or assigns. Mumtazzudin was named as the party to be notified.

(10) BSS, having been paid the price of the salt shipped by means of the transferable letters of credit, endorsed the two bills of lading generally and handed them to the paying banks who later forwarded them to the opening banks.

(11) Atlas, having paid the opening banks and thereby obtained the two bills of lading, caused them to be endorsed over to Chabbra for value.

(12) On July 23, 1977 Mumtazzudin were notified that the ship would shortly be arriving at Chittagong.

(13) On July 26, 1977 the ship arrived at Chittagong ready to discharge. Although Mumtazzudin were not in a position to present the two bills of lading, they persuaded the master or the ship's agents to deliver the whole of the 5,000 metric tons of salt to them without such presentation, in consideration of an indemnity signed on behalf of Mumtazzudin and countersigned on behalf of the Rupali Bank.

(14) In order to obtain the countersignature of the Rupali Bank, Mumtazzudin were obliged to deposit, and did deposit, a sum of Takas 2.7 million, equivalent to S$389,117.62, with the bank concerned.

(15) Chabbra, although not the sellers of the goods, invoiced Mumtazzudin for US$220,000, and sent the bills of lading through their bankers for collection by that firm.

(16) Mumtazzudin refused to take up and pay for the documents tendered to them by Chabbra. Chabbra accordingly took the decision to bring proceedings against the shipowners.

At the trial before Rajah J. in the High Court, Chabbra contended that Atlas had themselves bought the salt from IOC and re-sold it to Mumtazzudin for US$220,000, twice the price paid for it to IOC. On this basis Chabbra claimed, as assignees of Atlas through the endorsement and delivery to them of the bills of lading, damages of S$512,380, calculated by reference to a rate of exchange of S$2.3290 = US$1.

Rajah J. rejected this contention of Chabbra about a sub-sale and held that the damages should be related to the invoice value of the goods shipped, by which their Lordships understand him to have meant, in effect, the market value of the goods on delivery at Chittagong. The learned judge went on to say that, in the absence of reliable evidence as to what such value was, he had decided to take the amount of Takas 2.7 million, the sum deposited by Mumtazzudin with the Rupali Bank in order to obtain that bank's countersignature to the indemnity given by Mumtazzudin to the shipowners for the purpose of attaining delivery of the salt from the ship without presentation of the bills of lading. That sum, as indicated earlier, was equivalent to S$389,117.62, and that was the capital sum awarded by the learned judge as damages to Chabbra by his order dated March 16, 1981. The learned judge did not go into the question whether Chabbra's entitlement to such damages lay in contract or in the tort of conversion or both.

In the Court of Appeal, Chabbra, by their cross-appeal, sought to have the damages awarded to them increased to S$512,380 on the basis of the alleged sub-sale unsuccessfully relied on by them in the High Court. The Court of Appeal, however, like Rajah J., rejected Chabbra's case about a sub-sale, on the ground that there was no evidence to support it. The Court of Appeal accordingly dismissed Chabbra's cross-appeal, and, as indicated earlier, Chabbra did not appeal to the Board against that decision.

With regard to the shipowners' appeal the Court of Appeal held that Chabbra were entitled to recover damages from them both for breach of their contract to deliver and in tort for conversion. They held further, however, that the proper measure of damages in law, on either basis, was not the market value of the salt on delivery at Chittagong, but only the amount which Atlas had themselves expended in the transaction, in respect of the opening of the two letters of credit, bank charges and insurance premiums to cover the salt in transit. That sum, as stated in finding number (6) above,

was S$275,620.82, and the Court of Appeal varied the order of Rajah J. by reducing the award of damages to that amount. The ground of this decision appears to have been that Atlas were only pledgees of the bills of lading; that as such pledgees they only had a special, as distinct from a general, right of property in the goods represented by the bills of lading; and that they were, accordingly, not entitled to recover as damages the market value of the salt, but only the amount expended by them in financing the transaction, that being the amount secured to them by the pledging to them of the bills of lading.

Before their Lordships it was conceded by counsel for Chabbra that the Court of Appeal had been in error in holding that Chabbra could recover in contract, and accepted that they could only recover in tort for conversion. In their Lordships' opinion, having regard to the decision of the House of Lords in *Sewell* v. *Burdick*,[1] this concession was properly made. That case shows that, where endorsement and delivery of a bill of lading to a party are made with the intention, not of passing to that party the general property in the goods represented by the bills of lading, but only a special property in such goods by way of pledge, the Bills of Lading Act 1855 does not have the effect of transferring to such party either the rights or the liabilities under the contract contained in the bill of lading so endorsed and delivered. In the present case Atlas were, as found by the Court of Appeal, only pledgees of the bills of lading, and as such obtained only a special property in the goods represented by them.

This very proper concession by counsel for Chabbra was matched by an equally proper concession by counsel for the shipowners that, even though Chabbra could not recover from the shipowners in contract, they nevertheless had a good cause of action against the latter in tort for conversion.

Having regard to these two concessions made by counsel on either side, only two questions remain for actual or potential decision by the Board. The first question, which needs to be decided in any event, is whether the proper measure in law of the damages recoverable by Chabbra is (a) the full market value of the salt on delivery at Chittagong, as held by Rajah J., or (b) the total amount expended by Atlas in financing the purchase of salt by Mumtazzudin from IOC, as held by the Court of Appeal. If the answer to the first question is (b), no further question arises for decision. If the answer is (a), however, a second question arises for decision, namely, what Chabbra proved, on the evidence adduced before Rajah J., to have been the full market value of the salt on delivery at Chittagong.

So far as the first question is concerned, it is not in dispute that the pledgee of a bill of lading is entitled, on presentation of it to the ship at the port of discharge, to the possession of the goods represented by it. It has further, in their Lordships' opinion, been established, by authority of long standing, that where one person, *A*, who has or is entitled to have the possession of goods, is deprived of such possession by the tortious conduct of another person, *B*, whether such conduct consists in conversion or negligence, the proper measure in law of the damages recoverable by *A* from *B* is the full market value of the goods at the time when and the place where possession of them should have been given. For this purpose it is irrelevant whether *A* has the general property in the goods as the outright owner of them, or only a special property in them as pledgee, or only possession or a right to possession of them as a bailee. Furthermore the circumstance that, if *A* recovers the full market value of the goods from *B*, he may be liable to account for the whole or part of what he has recovered to a third party, *C*, is also irrelevant, as being *res inter alios acta*.

The only exception to the general principle just stated is when *B* has one or more cross-claims against *A* arising out of the same or some connected transaction. In that case *B* may be entitled to set-off or deduct the amount of any such cross-claim or cross-claims from the full market value of the goods in arriving at the amount of the damages recoverable from him by *A*: see *MacGregor* on Damages, 14th Edn. 1980, paragraphs 1075-1080. In the present case, however, there is no suggestion even that the shipowners had any cross-claim against Atlas arising out of the same or any connected transaction. It is, therefore, unnecessary to consider what the rights of Chabbra, claiming through Atlas, against the shipowners might otherwise have been.

In their Lordships' view it is sufficient, in order to illustrate the authority of long standing referred to above, to cite two cases only. The first case is *Swire* v. *Leach*.[2] In that case the plaintiff, who was a pawn-broker, had seized from him by the defendant, in purported execution of a distress warrant for arrears of rent, a quantity of unredeemed pledges which he had in his possession in

the ordinary course of his trade. It was held by the Court of Common Pleas, first, that goods deposited with a pawnbroker were privileged from distress; and, secondly, that the proper measure of damages for conversion was the full market value of the goods and not merely the value of the plaintiff's interest in them. With regard to this second part of the decision Earle C.J. said at page 492:

"In distraining these goods, the defendant was an absolute wrong-doer. The landlord had no colour of right to take them. The bailee, therefore, is entitled to the full value of the goods."

The second case is *The Winkfield.*[3] In that case there had been a collision between two ships, the "Mexican" and the "Winkfield", in consequence of which the "Mexican" sank. The owners of the "Winkfield" admitted that their ship was half to blame for the collision and, following such admission, successfully brought proceedings to limit their liability under section 503 of the Merchant Shipping Act 1894. Various claims were made against the limitation fund in court, including in particular two claims by the Postmaster-General for the loss of postal parcels, mail and registered letters of which he was not the owner. In respect of some of these items the owners of them had made claims on the Postmaster-General and given him written authority to represent them in the proceedings for distribution of the limitation fund. In respect of others of these items no claims had been made by their owners against the Postmaster-General nor had any instructions been given by them to him. He had, however, undertaken to distribute any monies recovered to the owners, and to indemnify the court against any claims which might later be put forward by them.

The Admiralty Registrar allowed the claim of the Postmaster-General in respect of the first group of items referred to above but disallowed his claim in respect of the second such group. An objection to the disallowance made by motion to the President (Sir F.H. Jeune) was overruled, and the Postmaster-General then appealed to the Court of Appeal. That Court (Collins M.R. and Stirling and Mathew L.JJ.) allowed the appeal, holding that the Postmaster-General, on the basis, accepted before the Registrar and the President, that he was the bailee of all the parcels, mail and registered letters concerned, was entitled to claim in his own name against the limitation fund for the full value of those items.

Collins M.R., with whose judgment the two other members of the Court of Appeal agreed, made a full review of the relevant authorities, including *Swire* v. *Leach supra,* which he treated as correctly decided, and *Claridge* v. *South Staffordshire Tramway Co.*,[4] which he regarded as wrongly decided and which was therefore overruled. Later he said at page 60:

"Therefore, as I said at the outset, and as I think have now shown by authority, the root principle of the whole discussion is that, as against a wrongdoer, possession is title. The chattel that has been converted or damaged is deemed to be the chattel of the possessor and of no other, and therefore its loss or deterioration is his loss, and to him, if he demands it, it must be recouped. His obligation to account to the bailor is really not *ad rem* in the discussion. It only comes in after he has carried his legal position to its logical consequence against a wrongdoer, and serves to soothe a mind disconcerted by the notion that a person who is not himself the complete owner should be entitled to receive back the full value of the chattel converted or destroyed. There is no inconsistency between the two positions; the one is the complement of the other. As between bailee and stranger possession gives a title – that is, not a limited interest, but absolute and complete ownership, and he is entitled to receive back a complete equivalent for the whole loss or deterioration of the thing itself. As between bailor and bailee the real interests of each must be inquired into, and, as the bailee has to account for the thing bailed, so he must account for that which has become its equivalent and now represents it. What he has received above his own interest he has received to the use of his bailor. The wrongdoer, having once paid full damages to the bailee, has an answer to any action by the bailor."

In support of the view that Chabbra could recover by way of damages no more than the amount of the limited interest secured to Atlas by the pledge to them of the bills of lading the Court of Appeal of Singapore relied on the decision of Channell J. in *London Joint Stock Bank (Ltd)* v. *British Amsterdam Maritime Agency (Ltd).*[5] The facts of the case were these. A contract provided for the sale by Dutch vendors of certain oil f.o.b. to P & Co. on the terms of cash against documents. The oil concerned was shipped by a firm, B & Z, on the ship "Maesstroom" for carriage from Amsterdam to London under a bill of lading dated April 29, 1910, which was made out in the name of P & Co. as shippers and which made the oil deliverable to their order or assigns. The oil was poured into drums belonging to P & Co. The bill of lading, together with a draft attached to it, were then sold by the vendors to certain bill brokers and they in turn sold them to an Amsterdam bank which had an account with the plaintiffs. The Amsterdam bank sent the bill of lading, together with the draft attached to it, to the plaintiffs for collection, and the plaintiffs, on receiving them, credited the Amsterdam bank on May 2, 1910

with the amount of the draft. When the "Maesstroom" arrived in London, P & Co. approached the defendants, who were the London agents of the owners of that ship, and informed them that they had not received the bill of lading for the oil, but that, if they could have delivery of the oil, they (P & Co.) would give them an indemnity; and on these terms delivery of the oil was given to P & Co. Subsequently P & Co. went to the plaintiffs, with whom they had business connections, and asked for an advance on the consignment of oil; and on May 4, 1910 this loan was arranged, and P & Co. endorsed the bill of lading, which was still in the plaintiffs' possession, and gave them a charge. Some days later, on the plaintiffs' representative applying to the defendants for the oil, they were informed that it had already been delivered to P & Co. who had disposed of it. The plaintiffs then sued the defendants for damages for wrongful delivery of the oil to P & Co.

Channell J. said at page 108:

"The general result, therefore, is that the plaintiffs are entitled to succeed in their action of trover. In an action like this between parties, each of whom has an interest in the subject matter, the plaintiffs are not necessarily entitled to the full value. In this case the amount having been reduced by payments off on other securities the plaintiffs are only entitled to the amount for which they held the bill of lading, and there will be judgment for the plaintiffs for that amount."

It is not clear from the report of the case what were "the other securities", the payment off of which Channell J. considered that the defendants were entitled to deduct from the full value of the oil. If the payment off of these other securities brought the case within the exception of a cross-claim or cross-claims by the defendants against the plaintiffs arising out of or connected with the same transaction, to which reference was made earlier, the decision may be supportable on its particular facts. Otherwise the case must, in their Lordships' opinion, so far as the measure of damages is concerned, have been wrongly decided and ought not to be followed.

Applying the general principle laid down in *Swire* v. *Leach* and *The Winkfield* to the present case, their Lordships reach the following result. First, Chabbra, as holders and endorsees for value of the bills of lading, had a right to delivery of the salt to them at Chittagong. Secondly, that right entitled Chabbra to recover from the shipowners, who had wrongfully converted the salt by delivering it to Mumtazzudin, the full value of the salt on delivery at Chittagong. Thirdly, the circumstance that Chabbra, having recovered from the shipowners the full value of the salt, might, after taking out of the sum recovered the sums expended by them in financing the purchase of the salt by Mumtazzudin from IOC, have to account, in whole or in part, for the balance to Mumtazzudin was, as between Chabbra and the shipowners, wholly irrelevant.

On the basis that the first of the two questions referred to earlier falls to be answered by saying that the proper measure in law of the damages recoverable by Chabbra from the shipowners for conversion of the salt was the full value of the salt on delivery at Chittagong, it becomes necessary for their Lordships to answer also the second question referred to earlier, namely, what Chabbra proved, on the evidence adduced by them before Rajah J., to have been that value.

In relation to this question, counsel for Chabbra put forward two alternative contentions. The first contention was that Rajah J. was entitled to assess the damages recoverable by Chabbra by reference to the amount deposited by Mumtazzudin with the Rupali Bank in order to obtain the counter-signature on behalf of that bank of the indemnity given by Mumtazzudin to the shipowners. The second and alternative contention was that there were other evidence given at the trial which supported a market value on delivery at Chittagong of at least the same amount.

Counsel for the shipowners met these two contentions as follows. With regard to the first, he submitted that the amount of the deposit could not be taken as a proper basis for the assessment of the damages, because it was intended to cover an adverse claim against the shipowners by a third party and would therefore include not only the damages which such third party might recover on the basis of the value of the salt, but also the costs of both the third party and the bank in dealing with such a claim. It was further to be assumed that the bank, in accordance with ordinary commercial practice, would require the deposit to include a fee for the bank and a substantial margin for contingencies. With regard to the second contention, counsel for the shipowners stressed the fact that Rajah J. stated expressly in his judgment (as he did) that he had only turned to the amount of the deposit as a basis for assessing damages because there was no evidence of market value which he regarded as reliable. That being so, it would not be right, counsel said, for the Board to make its own assessment of the amount of damages recoverable by

reference to the written record of evidence which the learned trial judge had expressly found to be unreliable.

In their Lordships' judgment, the arguments put forward by counsel for the shipowners are unanswerable and must prevail. The amount of the deposit could not, for the reasons given by him, be regarded as a proper basis for assessing the amount of the damages recoverable by Chabbra. Similarly evidence of the market value of the goods which the learned trial judge, who saw and heard the witnesses who gave it, found to be unreliable could not justifiably be used to found a fresh assessment of the market value of the salt by the Board.

The burden of proving the market value of the salt on delivery at Chittagong was on Chabbra. In the event, while it is probable that such value exceeded the sums of money expended by Atlas in financing the transaction of sale between IOC and Mumtazzudin, Chabbra failed to adduce any reliable evidence to prove what the amount of that excess was.

For these reasons their Lordships feel obliged to conclude that the amount of damages awarded by the Court of Appeal, although arrived at on a basis which they consider was incorrect in law, is nevertheless the only amount that they can justifiably arrive at on the different legal basis which they have already indicated that they consider to be correct.

In the result the victory which Chabbra have won in relation to the proper basis in law for assessing the amount of the damages recoverable by them turns out to be a fruitless victory which avails them nothing.

The judgment of their Lordships therefore is that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Philip Conway Thomas & Co.; Clyde & Co.*

SINGAPORE REPORTS

NG MUI MUI v. INDIAN OVERSEAS BANK

[C.A. (Wee Chong Jin C.J., Sinnathuray & Chua JJ.) July 17, 1985]

[Singapore – Civil Appeal No. 38 of 1984]

Land Law – Mortgage – Sale of mortgaged property – Whether sale at negligent undervalue.

The appellant was the owner of property known as 61, Marshall Road, Singapore, which she mortgaged to the Chartered Bank as first mortgagees and to the respondents as second mortgagees as security for payment of a judgment debt owing by the judgment debtors, one of whom was the appellant's husband. The respondents in furtherance of their power of sale sold the said property for $300,000. The appellant commenced this action claiming "an inquiry whether the money produced by the sale of the said mortgaged property was a proper and/or fair market price and an account on the basis of a proper and fair market price."

The appellant called in two expert valuers to justify her contention that the property was undervalued. The trial judge found that the appellant had not proved a breach of the duty of care the respondents owed to her and/or that she had suffered any damage thereby. The appellant appealed.

Held: it was for the appellant to prove on a balance of probabilities that the $300,000 obtained by the respondents was not the best price obtainable in the circumstances of this case and at the time in question. This she had failed to do.

Cases referred to:

(1) *Cuckmere Brick Co. Ltd.* v. *Mutual Finance Ltd.* [1971] Ch. 949.
(2) *Davey* v. *Durrant* 26 L.J. Ch. 830.

COURT OF APPEAL.

Helen Yeo for the appellant.
Lee Hock Seng for the respondents.

Cur. Adv. Vult.

Chua J. (delivering the Judgment of the Court): This is an appeal from the judgment of the High Court (Abdul Wahab Ghows J.) dismissing the claim of the appellant who alleged that the respondents had failed to exercise due care in the sale of a property mortgaged by the appellant to the respondents.

At the end of the appellant's case the respondents submitted that there was no case to answer.

Abdul Wahab Ghows J. was not impressed by